



IN THE
Supreme Court of the United States

October Term, 1970
No. 156

GEORGE K. ROSENBERG, Director,

Petitioner,

vs.

YEE CHIEN Woo.

**ANSWER TO PETITION FOR A WRIT
OF CERTIORARI.**

Introduction.

The opinion of the Court of Appeals, the basis for jurisdiction, the question presented, the statute involved, and the statement of facts contained in the Solicitor General's Petition for Writ of Certiorari are correctly set forth in his petition.

Reasons for Denying the Writ.

1. The petition for the writ should be denied inasmuch as it was not duly filed. A writ of certiorari must be filed within ninety (90) days from the day of judgment (28 U.S.C. 2101). The judgment of the Court of Appeals of the 9th Circuit was entered December 18, 1969. The government sought an extension of the ninety (90) day period in March 1970. Counsel does not have evidence of the exact date in March that the extension was requested. The extension was granted by Justice Douglas on March 23, 1970, well beyond

the ninety (90) day period of time for filing the petition for writ of certiorari.

Paragraph 2 of Rule 34 requires applications for extensions to be submitted at least ten (10) days before the expiration of the ninety (90) day period.

Paragraph 2 of Rule 34 states that an extension will not be granted except in the most extraordinary circumstances if filed during the last ten (10) days of such period. The period expired March 17, 1970. The Solicitor General's application for extension of time was filed sometime in March, but counsel's copy of the application for extension merely indicates that it was filed during the month of March and is undated. It is counsel's opinion that it was not filed within the period of time required by Paragraph 2 of Rule 34 nor were the "extraordinary circumstances" set forth to justify considering the application during the last ten (10) days between March 7th and March 17th, 1970.

2. Petitioner is in error in his petition in stating that the legislative history indicates that when the conditional entry provision of the Immigration Act of 1965 was passed that Congress intended to apply criteria used under previous refugee acts. It is true that in the Refugee Relief Act of 1953 (67 Stat. 400) the words "not firmly resettled" were included as a condition precedent to eligibility for refugee classification. What petitioner failed to show in his petition was that in four subsequent refugee acts these words were omitted in defining who was a refugee under each of those acts. These included the Refugee Act of September 11, 1957 (71 Stat. 639), which used the term "not a national" in lieu of "not firmly resettled"; the Act of July 14, 1960 (74 Stat. 504-5); the Act of June 28, 1962 (76 Stat. 121);

and this statute, the Act of 1965. In each of the four refugee statutes after the 1953 Act, Congress modified various portions of each refugee act but did not see fit to reinstate "firm resettlement" in any of these subsequent statutes. The inescapable conclusion, as reached by the Court of Appeals in the 9th Circuit in this case, is that Congress did not intend to reinstate the firm resettlement bar of the 1953 Refugee Act. To claim otherwise, as does the petitioner, is to seek a "mythical Congressional 'intent' in order to resolve the issue at hand". *Leong Leun Do v. Esperdy*, 309 F. 2d 467 (2nd Cir. 1962).

3. The recent decision of the Court of Appeals in the Second Circuit *Shen v. Esperdy* No. 34212 decided June 8, 1970 is easily distinguishable on a factual basis from this case. Shen left Mainland China with all his family and went to Taiwan, the seat of government and the sole territory remaining to the Chinese Nationalist Government. This government, of course, is the only one accorded diplomatic recognition by the United States. Shen, his parents, and his brothers and sisters all established residence in Taiwan and indeed all the remaining members of the family were still in Taiwan. Shen was a minor of the age of 13 at the time he commenced residing on Taiwan. He completed his schooling there and obtained employment with the United States Air Force. He traveled from Taiwan on a Chinese Nationalist passport, was employed in the United States Embassy in Australia for two years and then went to Japan where he studied for three years. Upon completion of his studies, he came to the United States as a visitor. An examination of the facts in *Woo's* case shows an entirely different situation. These facts

—4—

are correctly set forth in the government's petition. The only additional fact to be mentioned is that Woo had a certificate of identity issued by the Hong Kong government which expired in 1967.

Hence, even if the doctrine of "firm resettlement" were to be applied under this statute, the District Court found in *Woo's* case he had never been firmly resettled in Hong Kong (295 Fed Supp. 1370). Accordingly, unlike Shen, Woo has established eligibility under 203-(a)7 of the 1965 Act.

Conclusion.

Wherefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

GORDON G. DALE,

Attorney for Respondent.

August 20, 1970.

